

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD A. DAWDY,

Plaintiff-Appellant,

v

DUWAYNE DYKHOUSE and FARM BUREAU
MUTUAL INSURANCE COMPANY OF
MICHIGAN,

Defendants-Appellees.

UNPUBLISHED

January 20, 2005

No. 250876

Ottawa Circuit Court

LC No. 02-43362-NO

Before: Hoekstra, P.J., and Griffin and Borrello, JJ.

PER CURIAM.

Plaintiff appeals from the trial court's order of dismissal with prejudice in which the court held that defendant Farm Bureau's \$10 payment to a medical provider after the statute of limitations had expired waived the right of both defendants to assert the statute of limitations as to that payment, but not as to plaintiff's entire personal injury claim. We affirm.

On August 27, 1987, plaintiff, then five years old, was accidentally run over by a riding lawnmower driven by his grandfather, defendant Duwayne Dykhous. As a result of the accident, plaintiff suffered a severe and permanent injury to his left leg and foot. Dykhous was insured by defendant Farm Bureau. The statute of limitations for negligence actions when the injured is a minor expires on the injured's nineteenth birthday. MCL 600.5851(1). Neither plaintiff nor his parents settled with Farm Bureau or filed suit against Dykhous before plaintiff's nineteenth birthday, which was February 3, 2001.

Before plaintiff reached the age of nineteen, Farm Bureau reimbursed plaintiff and his parents for every accident-related expense not covered by plaintiff's medical insurance provider. After plaintiff's nineteenth birthday, Farm Bureau made one final payment of \$10 to Mary Free Bed Hospital on April 10, 2001, for services rendered to plaintiff before his nineteenth birthday on November 17, 2000. However, later in 2001, Farm Bureau rejected a bill from that same hospital for services rendered after plaintiff's nineteenth birthday. The hospital resent the bill to Farm Bureau in early 2002. Farm Bureau again refused to pay, informing the hospital that the bill was received after the statute of limitations expired.

Plaintiff filed suit against defendants on June 4, 2002. The complaint alleged estoppel against both defendants, negligence against Dykhous, and breach of contract against Farm

Bureau. Defendants moved for summary disposition of plaintiff's negligence claim on the grounds that it was filed after the statute of limitations expired. The trial court denied defendants' motion for summary disposition. According to the trial court, Farm Bureau was Dykhouse's agent for the limited purpose of dealing with plaintiff and his parents. The trial court stated that Farm Bureau's \$10 payment to Mary Free Bed Hospital after the statute of limitations expired might have waived Dykhouse's right to assert the statute of limitations as a defense to the negligence action and ruled that the trier of fact must determine whether Farm Bureau waived both its right and Dykhouse's right to raise the statute of limitations defense. After a one-day bench trial, the trial court ruled that Farm Bureau's \$10 payment to Mary Free Bed Hospital after the statute of limitations had expired waived the rights of both defendants to assert the statute of limitations as to that payment, but not as to plaintiff's entire personal injury claim. Thus, plaintiff's negligence action was barred by the statute of limitations.

On appeal, plaintiff argues that the trial court erred in holding that his negligence claim against Dykhouse was barred by the statute of limitations. "[W]hether a claim is barred by the statute of limitations is a question of law that we review de novo." *Wayne Co Social Services Director v Yates*, 261 Mich App 152, 154; 681 NW2d 5 (2004). Statutes of limitations are procedural devices intended to promote judicial economy and protect the rights of defendants by precluding litigation of stale claims. *Attorney General v Harkins*, 257 Mich App 564, 559; 669 NW2d 296 (2003). A statutory limitations period represents a legislative determination of that reasonable period of time that a claimant will be given in which to file an action. *Lothian v Detroit*, 414 Mich 160, 165; 324 NW2d 9 (1982). Statutes of limitation bar a claimant from filing suit after the statutory period has expired. A statute of limitation is an affirmative defense that may be waived. *Id.* at 167.

Plaintiff argues that the trial court erred in holding that by making the \$10 payment after the statute of limitations had expired, defendants only waived the statute of limitations as to that payment. According to plaintiff, Farm Bureau's payment of the \$10 operated as a waiver of the statute of limitations defense as to plaintiff's entire personal injury claim. We disagree. Our Supreme Court has held that waiver only occurs if there is an "intentional abandonment of a known right." *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 65 n 4; 642 NW2d 663 (2002). Thus, waiver will not be found absent a showing that the party waiving his right did so intending to relinquish that right.

On the facts of this case, we find that defendants did not intentionally abandon their right to assert the statute of limitations defense. Harlan Dean, the casualty claims specialist assigned to plaintiff's claim, was plaintiff's sole witness. Dean testified that he intentionally and voluntarily authorized payment to the hospital and that he intentionally and voluntarily waived the statute of limitations as to that one payment. However, Dean repeatedly testified that he never intended to waive the statute of limitations as to plaintiff's entire personal injury claim, nor did he intend to waive the statute of limitations to allow Dykhouse to be sued. Dean also testified that, had he intended to waive the statute of limitations as to plaintiff's entire personal injury claim, he would have paid the second bill from the hospital. Additionally, Dean wrote a letter to American Agricultural Insurance, Farm Bureau's reinsurer of plaintiff's claim, on April 10, 2001, the date on which the check was sent to the hospital. In that letter, Dean informed American Agricultural that plaintiff had reached nineteen years of age, that the statute of limitations had expired, and that Farm Bureau's reserve was closed; thus, no further payments

would be made. Dean's testimony and documented actions demonstrate that he did not intend the \$10 payment to waive the statute of limitations as to plaintiff's entire personal injury claim. Therefore, the trial court correctly held that Farm Bureau's conduct did not effect a waiver of the statute of limitations defense as to plaintiff's entire personal injury claim.

Because we hold that the trial court correctly ruled that defendant Farm Bureau's payment of the \$10 after plaintiff's nineteenth birthday did not constitute a waiver of the statute of limitations as a defense to plaintiff's personal injury claim, we need not address the alternative ground for affirming the trial court's decision that defendants advance in their brief on appeal.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Richard Allen Griffin
/s/ Stephen L. Borrello